

**Tennessee Ethics Commission
Minutes
Meeting of February 26, 2008**

The Tennessee Ethics Commission met Tuesday, February 26, 2008, at 8:30 am at the State Library and Archives. Chairman Hall, Commissioners Garland, Hall, Knight, Neal, and Purser were present. Commissioner Brown arrived during the discussion of item four (4). Prior to the Commission meeting, at 8:15, a rule-making hearing was held on proposed Rules 0580-01-03. The rule-making hearing was designated on the agenda as item one (1).

Item two (2) on the agenda under "Old Business" was the approval of the January 15, 2008 minutes. Commissioner Knight submitted written changes to the staff draft of the minutes. Commissioners determined there was no previous vote on Advisory Opinion 07-08 at the February 11, 2008 meeting. Commissioner Purser moved to adopt the opinion drafted by staff. Chairman Hall seconded. Chairman Hall, and Commissioners Purser and Garland voted to approve the staff draft. Commissioners Neal and Knight voted against approval. Commissioner Purser moved to approve the minutes. Commissioner Knight seconded. The minutes were unanimously approved.

Item three (3) on the agenda was the approval of the February 11, 2008 minutes. Commissioners Knight and Neal led a discussion of whether the minutes accurately reflected their conversation regarding the Response to the Joint Legislative Study Committee on the issue of contact information for candidates and officials. Commissioner Knight moved to approve the minutes as corrected. Commissioner Neal seconded. The vote to approve the February 11, 2008 minutes was unanimous.

Item four (4) on the agenda was the Draft Rules Pertaining to Administrative Sanctions for failure to file, 0580-01-04. General Counsel Himmelreich discussed informal procedures for late and non-filers and explained the Uniform Administrative Procedures Act (UAPA). Commissioner Neal and General Counsel Himmelreich discussed how an agency prosecutes contested case hearings under the UAPA. General Counsel Himmelreich suggested drafting rules for an informal procedure which could be used in lieu of a contested case hearing, with the respondent's consent. Chairman Hall welcomed Commissioner Brown to the meeting. Commissioner Knight led a discussion about the intersection of the UAPA and the Ethics Act. Chairman Hall stated his inclination to adopt an informal model for failure to file. Commissioner Knight indicated her desire to understand what informal models were used by the Secretary of State and Registry of Election Finance. Commissioner Purser moved to effectuate an informal proceeding. There was no second. General Counsel Himmelreich discussed promulgating rules by publication.

The Commission discussed their ability to go ahead with the informal procedure without the rule being final. The Commission discussed the possibility of asking persons to voluntarily agree to adjudication under the proposed rule even though the rule was not final. Commissioners also discussed their ability to go ahead with a probable cause hearing for a pending complaint and what such a hearing would entail. Commissioner Neal moved to notify the parties to the complaint that the Commission would like to proceed with using an informal procedure subject to their agreement. Commissioner Purser seconded. The motion was unanimously approved. The Commission discussed whether it should clarify the motion applied only to late and non-filers, and did not apply to probable cause hearings. Commissioner Knight moved in favor of such a clarification. Commissioner Purser seconded. The clarification motion was unanimously approved.

Item five (5) on the agenda was training. Commissioner Neal suggested the Commission take more oversight of training. Commissioner Neal suggested allowing other entities to perform training and allowing for on-line training. The Commission discussed comments from persons who had taken the training. Mark Greene, of the Tennessee Lobbyists Organization, gave feedback on the training. Mr. Green discussed complaints he overheard within the regulated community. There were no motions or votes on this item.

Item six (6) on the agenda were Legislative issues and the Commission's further response to the Joint Legislative Study Committee. The first part of item six (6) was a discussion about informing the Study Committee about problems the Commission had encountered in giving notice of the financial disclosure requirements to candidates and elected officials. This item had previously been discussed at the Commission's February 11, 2008 meeting. General Counsel Himmelreich and Executive Director Androphy suggested that the Commission suggest amending the Ethics Reform Act in this regard as set forth in the staff draft response. Commissioner Knight suggested offering more alternatives than were included in the staff proposal. The Commission discussed the proper formatting of memoranda. Commissioner Purser moved to approve staff's recommendation including Commissioner Knight's suggestions. Commissioner Garland and several other Commissioners seconded. Commissioner Brown stated his preference for informing the legislature of problems without making suggestions on resolution. The Commission approved the staff proposal with Commissioner Knight's suggestions. Commissioner Knight voted against approval.

The second part item six (6) was a discussion about informing the Study Committee of the lack of sanctions for failure to attend mandatory lobbyist training. Commissioners discussed the staff's draft and whether the Commission wished to include administrative sanctions as well as civil penalties. Commissioner Knight indicated opposition to administrative sanctions, (i.e. prohibiting lobbyists from registering, and terminating their registration.) Commissioner Purser stated he favored administrative sanctions. General Counsel Himmelreich proffered the alternative of an injunction in chancery court. Commissioner Purser moved to adopt the proposal as drafted by staff. There was no second. Commissioner Purser withdrew his motion. Commissioner Knight moved to approve her draft sanctions for failure to attend training. Commissioner Hall seconded. Commissioner Neal asked Commissioner Knight to repeat her motion. Commissioner Knight repeated her motion to approve her draft of sanctions for failure to attend training. Commissioner Neal seconded. Chairman Hall stated he had not read Commissioner Knight's edits and could not second. The Commission approved Commissioner Knight's draft response to the Study Committee discussing sanctions for failure to attend training. Commissioners Hall and Purser voted against approval.

The third part of item six (6) was a discussion of whether the Study Committee wished to consider consolidating and simplifying the in-state exceptions to the gift ban. Commissioner Knight indicated she had re-drafted the staff proposal and included Tenn. Code Ann. 3-6-305(b)(9), whereas staff had addressed only subsections (8) and (10). The inclusion of subsection (9) in the proposal was discussed. Commissioner Knight moved to approve her draft. Commissioner Brown seconded. Commissioner Purser voted against approval. The motion passed.

The Commission then broke for lunch.

After lunch, the Commission resumed discussion of item six (6), study committee responses. The fourth part of item six (6) was a discussion of the Commission's response to the proposed merger

of the Commission with the Registry of Election Finance. General Counsel Himmelreich discussed his memorandum on behalf of Chairman Hall, Commissioner Garland and Commissioner Purser. Commissioner Brown abstained from comment. The Commission discussed whether it was appropriate for the Commission to submit a memorandum regarding merger. The Commissioners discussed the format of the memorandum. General Counsel Himmelreich was asked to prepare a memorandum opposing merger on behalf of Chairman Hall and Commissioner Purser. Commissioner Garland wished to submit a draft statement at a later time. Commissioners Knight and Neal stated they would submit their own drafts which General Counsel would include in the final memorandum.

Though not on the agenda, the next item was a discussion of what documents counsel could provide to public in attendance at Commission meetings. Members of the public in attendance had requested copies of the various attorney-drafted items being discussed. General Counsel Himmelreich discussed the Open Meetings Act, the Public Records Act, and attorney-client privilege. Chairman Hall and Commissioners Brown, Knight and Neal stated their opposition to a blanket waiver of the attorney-client privilege. All Commissioners agreed that General Counsel Himmelreich and Chairman Hall should discuss what to release to the attending public before each meeting.

Item seven (7) on the agenda was pending legislation affecting the Commission. This item was not discussed.

Item eight (8) on the agenda under "New Business" was response or comment on the Fincher Bill on paper filings. Executive Director Androphy stated he would look at the amended bill and update the Commissioners by e-mail.

Item nine (9) on the agenda was Draft Advisory Opinions. With regard to item 9(a), David Shepard's request for an Advisory Opinion, the Commission discussed the proper format for Advisory Opinions and whether it was proper to issue informal advice letters in lieu of formal opinions. The Commission also discussed whether advisory opinions should be physically signed. Commissioner Knight discussed a draft opinion she had written. Commissioner Knight moved that her draft become the official opinion. The motion was unanimously approved.

The next part under this item was item 9(b), the draft advisory opinion for the Tennessee Homebuilders Association. Commissioner Knight stated the commemorative bottle of wine was appropriate under Tenn. Code Ann. Sec. 3-6-305(b)(10) and the glasses were appropriate under Tenn. Code Ann. Sec. 3-6-305(b)(6). Commissioner Brown agreed that the decorative wine bottle was appropriate under subsection (b)(10). Chairman Hall moved to approve the Advisory Opinion drafted by staff. Commissioner Purser seconded. Commissioner Knight voted against the motion. The motion was adopted. After the vote, positions were clarified. Commissioner Brown clarified he agreed with the conclusion, but stated the wine fell under subsection (b)(10). Commissioners Knight and Neal agreed with Commissioner Brown. Commissioner Knight stated her opinion that the glasses were acceptable under subsection (b)(6) and not subsection (b)(4) as stated in the staff draft. The differing views were to be noted on the Advisory Opinion.

Item ten (10) on the agenda was Pending Opinion Requests. Item 10(a) was not discussed as the American Heart Association informed counsel that their issue was moot. General Counsel detailed pending requests and asked the Commission to consider requiring all future requests be in letter format.

Item eleven (11) on the agenda was teleconference meeting issues. The Commissioners were

displeased with the prior teleconferences due to technical issues. The Commission, Executive Director and General Counsel discussed the possibility of acquiring a telephone designed for conference calls. The Commissioners agreed that the Executive Director should announce the names and affiliations of persons entering and leaving the room during future conference calls.

Item twelve (12) on the agenda was responses to media inquiries. The Commission discussed whether and how staff should respond to media questions. The Commission discussed their desire that staff be responsive to the media, as well as to members of the regulated community and general public. Chairman Hall and Commissioner Garland discussed that no staff member can control what the media publishes or how a statement is reported. The Commission agreed that staff should do all they can to avoid the appearance of compromising the Commission's objectivity or giving the appearance of prejudging.

Item thirteen (13) on the agenda was the agenda for the meeting of March 25, 2008. This item was not discussed.

Item fourteen (14) on the agenda was the General Counsel's Report. General Counsel Himmelreich delivered an oral report. General Counsel discussed reformatting friendship rules, the drafting of advisory opinions, and pending opinion requests.

Item fifteen (15) on the agenda was the Executive Director's Report. Executive Director Androphy discussed the functionality of the computer portals, the amount of fees that had been collected, the amount of fees owed, the numbers of registered lobbyists and employers of lobbyists, and when the rules on filing would be in place. Commissioner Neal asked that a monthly income/ expense statement be provided to Commissioners for the March Board Book and regularly thereafter.

Chairman Hall then stated he would not be able to preside at the next meeting if it were held on its scheduled date and a discussion regarding other possible dates ensued. Other dates did not appear to be feasible, so the scheduled date, March 25, 2008, was left in place. Chairman Hall asked Commissioner Neal to chair the March meeting.